STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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MEMORANDUM

To: Assessing Officials

From: Department of Local Government Finance

Date: October 2006

Subject: Common Area Property Assessments

The Indiana Board of Tax Review (IBTR) recently issued a final determination in Brenwick TND Communities, LLC and BDC Cardinal Associates, L.P. vs. Clay Township Assessor, and Hamilton County Property Tax Assessment Board of Appeals (various Petition and Parcel numbers – see http://www.in.gov/ibtr/decisions/may06/29-003-03-1-5-00030.pdf) involving the assessment of common area property. The IBTR ruled (in this particular case) that the common areas of two subdivisions had a market value-in-use of zero dollars (as of the March 1, 2003 assessment date). In a similar matter, the IBTR ruled in favor of the DLGF (http://www.in.gov/ibtr/decisions/may06/45-044-02-1-4-00036.pdf). In this particular case, the taxpayer failed to make a prima facie case that the common elements did not have a value. Hence, it is important to re-emphasize the need to prepare and present a well-documented case in an appeal.

In light of the recent IBTR rulings, the question has been raised whether or not common area property should be assessed. In valuing a development, such as a condominium project, the value of the common areas would typically be included in the sales prices of the individual units. The value of the common areas would be accounted for in the Neighborhood Factor; particularly when there is a deeded interest in the property (the legal description of the property will typically include a percentage ownership in the common area). For example, when a purchaser buys a condominium unit, they are also paying for their share of the common ownership of the common areas. If the common areas were to be valued separately (i.e. using the cost approach), and the value allocated back to each unit based upon the condominium declaration or taxing the Homeowner Association separately, in essence, the common areas would be doubled assessed.

Alternatively, if a condominium unit were to be valued using the cost approach, then a value would be placed on the common areas, and the value allocated to each unit or the association would be taxed for the common areas as a separate parcel. There may also be some common areas that should be valued separately, particularly if those improvements generate income or they may be used or enjoyed by the public, such as a golf course that is part of a residential subdivision.

There is no definition of common area property in the 2002 Real Property Assessment Guideline; however, in the International Association of Assessing Officers Glossary for Property Appraisal and Assessment (1997), common area is defined as: "The total area within a property that is not designed for rental or sale, which is available for common use by all tenants and owners." Examples might include, but are not limited to, parks, irregularly shaped green space, drainage areas, streets, lakes, ponds, and community buildings and improvements.

In an Assessment Law Notes publication, James F. Gossett explored case law involving "the extent to which public and private restrictions on common area elements may affect market value." He concluded that: "courts do seem to be carefully analyzing the fact situations in individual cases, and there may be many instances in which courts will decide that common areas have retained at least some taxable value. The degree to which restrictions on common areas are 'private' or 'public,' that is, self-imposed or governmental, may have a great bearing on whether a court will find that value has been transferred."

Hence, while there may not be a definitive answer in determining whether or not common area should be assessed separately or as part of the value of the individual units or lots, including the Neighborhood Factor, there are several things to consider:

- Are the common areas of a development burdened with easements and other restrictions on their use and transfer to such a degree as to render those areas devoid of market value?

- If it is so burdened as to deprive it of any market value, the taxpayer must prove it through competent evidence.

- If there is a deeded interest in the property, the value should be reflected in the sales price and the Neighborhood Factor. If there is no deeded interest, the common area probably does not have a significant value.

- "True tax value" is defined as: "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Easements and other restrictions on the use of the property must be considered in determining the property's true tax value.

- Is the Homestead Deduction being applied to non-Homestead property?

- Does all property included in the area the neighborhood factor is based upon have a similar interest in the common elements?

Please contact either Barry Wood or Lori Harmon at (317) 232-3773 if there are any questions regarding this memorandum.